The Adams Mine Landfill Project: How Does the *EBR* Fit In?

Background

In late July 2000, a number of individuals and groups began contacting the Environmental Commissioner of Ontario (ECO) and requesting that our office review the Adams Mine landfill project. The Commissioner asked his staff to conduct research on this subject because these inquiries raise some important issues about provincial approvals that may have been or may be granted by two ministries prescribed under the *Environmental Bill of Rights* (*EBR*)—the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR). The history of the Adams Mine project is complicated and the relationship between the *EBR* and the *Environmental Assessment Act* (*EAA*) is complex. This article provides basic information about the project and the role of the *EBR* and the ECO.

Adams Mine Landfill Project

Rail Cycle North is a consortium of companies that include Notre Development Corporation (Notre), Canadian Waste, Miller Waste Systems, Ontario Northland and CN Rail. The key player in the consortium is Notre, which owns the Adams Mine site, located southeast of the Town of Kirkland Lake in northern Ontario. The Adams Mine site was previously used as an open pit iron ore mine.

The chronology of the Adams Mine landfill project is as follows:

1989	Notre was formed to provide long-term residual waste disposal capacity for Ontario markets. Notre saw the need for new disposal capacity within Ontario to serve the Greater Toronto Area (GTA) and studied the reuse and rehabilitation of closed mine sites for potential waste disposal capacity.
1995	Metro Toronto carried out technical studies and consultation on the Adams Mine's environmental acceptability and developed a landfill design to meet its disposal needs, but decided not to develop the site itself.
1996	Notre continued the environmental assessment (EA) process, seeking approval under the *EAA* for the construction, operation, closure and long-term monitoring and maintenance of a non-hazardous, solid waste disposal site on at the Adams Mine. By late 1996, Notre had filed all necessary technical studies with MOE.

December 16, 1997	The Minister of the Environment announced his decision that a scoped Environmental Assessment Board (EAB) hearing was in the public interest to decide on the effectiveness of the proposed landfill design. A scoped hearing focuses only on outstanding environmentally significant issues, as defined by the minister, and must occur under tight time constraints.
1998	During the EA hearings the Adams Mine Intervention Coalition (AMIC), representing the environmental and social interests of local residents and farmers, opposed the landfill project.
June 19, 1998	An EAB panel conditionally approved the project by a majority of 2-1. The Board had concerns about the project and ordered further test drilling of the rock surrounding the abandoned mine pit. Further testing was done to the satisfaction of the ministry and the approval was issued.
August 1998	The Ontario Cabinet rejected an appeal by AMIC and approved the decision of the EAB.
September 1998	AMIC launched a judicial review of the EAB decision.
April 1999	MOE issued a certificate of approval (C of A) under the *Environmental Protection Act* (*EPA*) to Notre for the Adams Mine site. Notre must also obtain permits from MOE under the *Ontario Water Resources Act* (*OWRA*) and an approval to acquire Crown land from MNR.
July 1999	The Divisional Court dismissed the application by AMIC, saying the EAB did not act improperly in deciding to approve the landfill. In October, the Ontario Court of Appeal refused to hear an appeal of this decision.
March 2000	The Minister of the Environment rejected AMIC's request to reconsider the approval given to Notre.
March 2000	Temiskaming First Nations Chief Carol McBride asked for a federal review of the project under the *Canadian Environmental Assessment Act*.
August 3, 2000	City of Toronto Council voted to approve the proposal to send its waste to the Adams Mine landfill site.

The proponent of the Adams Mine landfill project has made the following claims about the transportation system and the landfill:

- Waste will be loaded into containers in the GTA and transported by rail to the Adams Mine site, where it will be disposed of in a 330-hectare landfill waste disposal facility.
- "Hydraulic containment" will ensure environmental security at the disposal site because groundwater flows into the pit where the waste is landfilled rather than flowing outward from the pit.
- Landfill gas will be collected through a system that will reduce odour and use the gas as an energy resource.
- The surface of the landfill will be capped by a cover system of several layers of drainage material, soil and vegetative cover, limiting the amount of precipitation that can penetrate the deposited waste.

Notre claims that the Adams Mine site has a number of environmental advantages, including the following:

- The site's remote location 7 kilometres away from the nearest residence will minimize nuisance impacts such as noise and dust from landfilling activities.
- There are minimal visual impacts.
- The arrival of waste by rail will reduce impacts from truck noise and potential accidents.
- There are no conflicting land uses or impacts on residential development or commercial activities.
- The project includes the construction of an $8 million leachate treatment plant.
- The natural inward flow of groundwater to the pit provides favourable conditions for a solid waste landfill.

However, opponents of the Adams Mine project have raised a number of concerns with its design. These include the following claims:

- The design assumes that water will flow only into the pit and not out through cracks or fissures in the fractured pit walls or under the base of the pit.
- There is no real evidence that the gravel blanket and drainage pipes, on which the design depends, will last for 1,000 years.
- The rock structures have not been thoroughly investigated and there may be a possible escape route for contaminants.
- It would be difficult to mine in surrounding areas because sinking a shaft or pit near the dump site could change groundwater flow, causing contaminants to escape from the site.
- The vast area of mine tailings at the Adams Mine was not designed to be flooded for 1,000 years.
- If Notre's design fails, it could result in contaminated ground and surface water because the fractured rock around the Adams Mine can't absorb any of the chemicals or heavy metals that will be present in the wastewater produced by the dump.

The *EBR* and the *EAA*

The *EBR* provides residents of Ontario with certain rights to participate in environmental decision-making and take action to protect the environment. Under the *EAA*, proposals for major public and some private projects are assessed to make sure they are environmentally acceptable. Because the *EAA* provides for some public participation, projects approved under it are exempted from parts of the *EBR* so that public participation processes aren't duplicated. As a result, only a few *EBR* rights are available in relation to the Adams Mine project.

Environmentally significant policies and regulations under the *EAA*, amendments to the *EAA*, and exemptions from the EA process are posted on the Environmental Registry for public notice and comment. However, approvals under the *EAA* and instruments under other Acts (such as permits under the *OWRA* or *EPA*), which implement decisions that were already approved as part of an individual EA or a class EA, are not posted for public comment. These instruments are also not subject to the third party appeal rights provided by the *EBR*.

No instruments under the *EAA* are prescribed for applications for review under the *EBR*. However, the *EAA* itself, and regulations and policies under the *EAA*, may be subject to a request for review. Decisions that have been made within the last 5 years will not be the subject of a review unless there is new evidence that was not taken into account when the decision was made.

Residents also can request that need for a new act, policy or regulation be considered to address an environmental problem. For example, an applicant could request that a new law or policy be considered to address the concerns raised by individuals who are opposed to the Adams Mine project. There are many other possible issues that may be addressed by a request for review.

Similarly, no instruments under the *EAA* are prescribed for investigations under the *EBR*. However, the *EAA* is a prescribed Act for applications for investigation. Because section 38 of the *EAA* makes it an offence to fail to comply with a term or condition of an approval issued under the *EAA*, such an offence may be the subject of an application for investigation. In addition, non-compliance with the terms and conditions of an instrument related to an EA but issued under the *EPA* or the *OWRA* would be a violation of the *EPA* or *OWRA* and therefore grounds for an application for investigation. For example, non-compliance with the 66 conditions of the certificate of approval to Notre in April 1999 would be grounds for an application for investigation.

It is also possible to bring a court action where the contravention of the *EAA*, a regulation under it or a prescribed instrument causes significant harm to a public resource, if an application for investigation has already been made. In addition, the *EBR* allows people to bring a public nuisance action regardless of whether or not the defendant has an approval under the *EAA*.

The Role of the Environmental Commissioner

The Environmental Commissioner of Ontario is an independent officer of the Legislative Assembly of Ontario whose role is to review and report on the compliance of certain Ontario government ministries with the *EBR*. The Commissioner does not have the authority to intervene directly on behalf of citizens nor may he override decisions made by Cabinet or by ministry officials. Also, the *EBR* does not apply to municipalities or municipal council decisions, although it applies to some Acts, policies, regulations and instruments of the Ministry of Municipal Affairs and Housing (MMAH).

The ECO does review environmentally significant decisions made by prescribed Ontario government ministries in our annual reports. In past reports, the ECO has pointed out concerns with the EA process. For instance, in our 1996 annual report, we commented that the amendments to the *EAA*, including provisions allowing scoped EAB hearings, were made without adequate public consultation.

Members of the public have made more than 15 applications for investigation in relation to alleged contraventions of the *EAA*. The ECO reviews and reports on the ministries' handling of these applications. In our 1998 report, for example, we reported on an application in which the applicants alleged that a company contravened the *EAA* by building a road on Crown land without an approved Forest Management Plan under the Timber Class EA. For more on our findings in that matter, see page 278 of the ECO's 1998 annual report.

The ECO will continue to monitor how the ministries apply the *EAA* and, in cases where Ontario residents request the appropriate investigations and reviews under the *EBR*, the ECO can review how the ministries enforce the terms and conditions of the thousands of specific EA approvals that remain in effect in Ontario.

For more information about your *EBR* rights, contact Mark Murphy, Public Education Officer at the Environmental Commissioner's office, at (416) 325-3375 or e-mail us at ecowebmaster@gov.on.ca.